

CALFED
BAY-DELTA
PROGRAM

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July 6, 1998

Ms. Cynthia Koehler
Save San Francisco Bay Association
1736 Franklin Street
Oakland, CA 94612

Dear Ms. Koehler:

Thank you for your letter of March 3, 1998. We are working to incorporate some of your concerns in the next iteration of the assurances proposal. I agree that assurances are central to the success of the Program.

Assurances Generally

I can appreciate the frustration that the assurances package is not yet complete for any of the Program elements. However, as implementation and assurances are so intertwined, it would be inappropriate to commit to specific assurances before we have consensus on what the overall implementation plan comprises. We are beginning the task of coordinating the implementation plans for each of the common elements. It will be an intricate process to make certain that implementation requirements of one common element do not conflict with others and that no one element of the Program is given more or less advantage than any other.

As far back as 1996, at the Bay-Delta Institutional Issues Assembly, it was clear that absolute assurances were not possible and that any assurances package could not guarantee outcomes. The function of the assurances package, when it is completed, is to provide a high degree of confidence that the solution will be operated and implemented as agreed through mechanisms that provide the Program with enough flexibility, authority and stakeholder involvement to respond through process as needed to meet solution principles.

We are engaged in an iterative process of identifying and reaching consensus on those mechanisms that will provide the types of assurances envisioned early on. In addition, the contingency response process we are now developing will provide for the inevitable events that this Program can in no way influence or control. The staging process now being

CALFED Agencies

California
The Resources Agency
Department of Fish and Game
Department of Water Resources
California Environmental Protection Agency
State Water Resources Control Board

Federal
Environmental Protection Agency
Department of the Interior
Fish and Wildlife Service
Bureau of Reclamation
U.S. Army Corps of Engineers

Department of Agriculture
Natural Resources Conservation Service
Department of Commerce
National Marine Fisheries Service

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developed as part of the implementation strategy is one way to ensure performance since objectives and actions within each stage will have to be completed before the next stage is permitted to begin. Linking actions across common element programs where appropriate further reinforces likelihood of performance.

Specific Recommendations

CALFED is making every effort to go well beyond traditional means of resolving water policy issues to ensure that the environment does not bear the cost of decisions or future actions. You raise 10 specific recommendations in your letter on ways to revise the Assurance proposal. It is my belief that the Program is actually working on elements of all 10 of these issues, although the focus point of these discussions may not always be the BDAC Assurances Work Group. To some of your specific comments, I have the following response.

Conservation Strategy

As you state in your letter, CALFED is integrating the implementation of its restoration program (ERP) and the measures necessary to mitigate for any Program impacts through the development of a comprehensive Conservation Strategy. Though the Strategy will ensure that CALFED complies with the Federal Endangered Species Act, the California Endangered Species Act and the Natural Community Conservation Planning Act, it goes beyond the standards required by those Acts in that it embraces the species goals of the ERP to achieve recovery, contribute to recovery, and ensure conservation of species covered by the Strategy.

The Conservation Strategy will not in and of itself provide take authorization. It will, however, provide the necessary biological information, impact analysis and programmatic conservation measures, that in combination with project specific details will lead to take authorization through one or more of the regulatory mechanisms mentioned in the preceding paragraph.

The Conservation Strategy will provide an unprecedented means to track cumulative effects of Program actions on the covered species. As these effects are analyzed and incorporated into the ERP adaptive management element, refinements to the ERP's priorities and recovery objectives may be necessary. The Strategy will provide the Program with the framework for recognizing and implementing those refinements as necessary.

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Legal Mandates and Remedies

The need for a carefully crafted implementation plan from which good assurances are developed is underscored by your observation that the federal ESA and state CESA, which are legal assurances, must continue to exist and be enforced for species to be protected and recovered. Those existing legal mandates are not absolute assurances since they are subject to amendment that might weaken their ability to protect or restore Delta species. I believe all Program participants are better served agreeing to Program standards of restoration that will be supported regardless of the status of the ESA and CESA and concomitant legal remedies.

An option for assurance of restoration program performance is legislation, but it poses high risk to the Program because of the significant uncertainty about how the biological processes will respond to recovery efforts. One potential outcome of current efforts is that we might not see any recovery despite carrying out all restoration actions. Were that to happen, it would serve no purpose to turn to the courts since it is doubtful there would be any identifiable remedy. While the assurances package may ultimately contain recommendations for legislation, the combination of adaptive management, staging and linkages and a contingency response process will provide the best assurances that the Program will continue to work toward its restoration objectives. Staging and linkage offer implicit sanctions against letting restoration languish since failure to attain objectives in one area will affect progress in other areas of the Program.

The contingency response process under development should be designed to resolve problems such as the ones you suggest in which a project violates the terms of the operating rules or restoration targets are not achieved. The contingency response process, in combination with the conservation strategy that provides evaluation of actions for potential negative effects on species will ensure, to the extent possible, that new facilities create no new ecological harm.

You also recommended that review of ERP progress by an independent scientific review panel be a standing part of the new entity. Periodic independent scientific review is part of the ERP.

Funding

I share your concerns about assuring funding. It is certainly among the most significant issues for assurances, and I know of no other comparable situation where funding has ever been 100 percent reliable. Even entities which have their own taxing authority, such as the South Florida Water Management District, may have needs which exceed revenues if

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significant unforeseen events create additional demands on the budget or reduce the revenue stream. As I am sure you are aware, these issues are being discussed and worked on as part of the BDAC Finance Work Group.

Research Report

I appreciate your suggestions for strengthening the usefulness of the research report, particularly the suggestion about drawing distinctions and parallels to the Bay-Delta situation. There was a deliberate effort to keep observations about operational characteristics neutral since perceptions about a program's strengths or weaknesses are in the eye of the beholder. I concur with your statement that tools and approaches that work in one instance may not work in another, which is why the report states in both the executive summary and in the conclusions section that readers should be mindful of the particular context in which other programs developed and function.

There are many ways in which a report could have been developed such as exclusive focus on funding of complex programs or the performance of habitat restoration efforts. The report presents a broad array of issues: the authority of different institutional structures, public outreach, and the relationship of public support to scientific and technical planning are just a few in the diverse range of topics which provide information for further discussion and contacts for further inquiry by CALFED participants.

The Columbia River Salmon Recovery Program is another program that may provide valuable information to CALFED. Due to staff time and budget constraints, this may not be possible; but we will keep it in mind for study.

Assuming everyone can agree that CALFED is the best opportunity competing interests have for equitable outcomes, I hope participants will consider that assurances need to be reciprocal. CALFED cannot take the crucial steps toward crafting and implementing a solution without a genuine effort by each interest to make this a creative endeavor to find common ground and mutually beneficial solutions.

The staging plan with the linkages that we are now developing, should reinforce Program ecosystem restoration goals. The staging plan has already helped focus both agencies and stakeholders on issues of greatest concern. Since failure to meet objectives in one Program element may prohibit linked, or all elements, moving into the next stage, all participants acquire an interest in having each element successfully meet its targets and objectives. The package of assurances for ecosystem restoration is not yet complete since there has not been consensus on several of the tools necessary for an equitable staged implementation plan. A good package of assurances should emerge as the separate components that are being developed begin to overlap more.

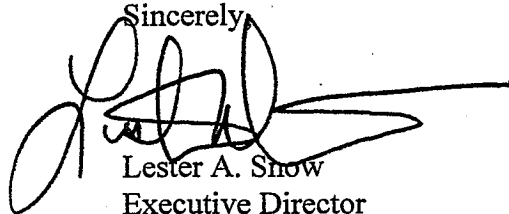
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I know the assurances staff and consultants have reviewed your letter in detail. While my response only covers a subset of your concerns, I am confident that our ongoing discussions -- such as will occur at the next BDAC Assurances Work Group meeting -- will help us resolve any differences, real or perceived, regarding the developing assurances package.

Sincerely,

A handwritten signature in black ink, appearing to be "Lester A. Snow", with a long horizontal stroke extending to the right.

Lester A. Snow
Executive Director